Cur. Adv. Vult.

Winslow J.: The plaintiff in this action claims damages in respect of —

(1) false imprisonment as a result of a report made by the defendant to the police on 4th January, 1964 that the plaintiff had threatened him over the telephone. This led to his arrest and detention by the police at the Central Police Station between 10 a.m. and 1 p.m. on 7th January, 1964;

(2) malicious prosecution in respect of 2 charges of perjury arising out of a complaint made by the defendant to the fourth magistrate on 6th January, 1964 alleging that the plaintiff had given false evidence in the High Court in Civil Suit No. 542 of 1962.

After careful consideration of the evidence and of the many authorities cited on the law relating to these two matters I have decided as follows:—

(1) The defendant did not authorise the arrest of the plaintiff nor did he make any charge on which it became the duty of the police to act. The police acted on their own initiative in effecting the arrest 3 days later, presumably on the ground contained in section 31(1)(a) of the Criminal Procedure Code, (Cap. 132) which entitles a police officer to arrest without a warrant any person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any seizable offence. In making the arrest the police must be taken to have been so satisfied although eventually, after further investigation, a decision was taken by the deputy public prosecutor not to prosecute the defendant. In the circumstances I cannot see how the defendant can be held liable for directing a wrongful arrest. I find that the defendant had just cause and excuse for making his report and that he did not act maliciously or make a false report. He was genuinely frightened and nervous after receiving the telephone call in question and passed on his fears in an information to the police on which they took independent action. It should be noted that the plaintiff does not challenge the legality of the police action in making the arrest as the plaintiff did in the case of *Tan Kay Teck & Anor.* v. *The Attorney-General.*[1] The action taken by the police in the present suit was, in my opinion, lawful.

(2) With regard to the claim for malicious prosecution I find that the defendant was not prompted by malice against the plaintiff in making his complaint to the fourth magistrate on 6th January, 1964 despite the long-standing feud between them. His predominant desire was to vindicate the law and he honestly believed in the guilt of the plaintiff. Moreover, the Attorney-General granted a sanction for the prosecution of the plaintiff and on the authority of *Bradshaw* v. *Waterlow & Sons, Ltd.*[2] there cannot be an absence of reasonable and probable cause in such circumstances. Even if the sanction of the Attorney-General had not been required for a prosecution such as this I would still hold that on the facts of this particular case the plaintiff has not shown absence of reasonable and probable cause on the part of the defendant in setting the law in motion.

The plaintiff's claim is accordingly dismissed with costs.

Claim dismissed.

Solicitors: *R. C. H. Lim & Co.; L. A. J. Smith.*

NG HOONG KEE v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Raja Azlan Shah J.) August 29, 1966]

[K.L. — Federal Court Criminal Appeal No. X24 of 1966]

Penal Code, s. 436 — Mischief by fire — Necessity to prove intention — Evidence circumstantial only.

This was an appeal against the conviction of the appellant on a charge of causing mischief by intending to cause the destruction by fire of a house. The prosecution case was that the appellant caused the fire and his intention was to destroy certain papers and accounts of an association of which he was the secretary and his motive was to get rid of evidence that might be used against him.

Held: there was insufficient evidence on which the learned judge could have come to the conclusion beyond reasonable doubt that it was the appellant who started the fire to destroy the building and therefore the conviction must be set aside.

Case referred to:—

(1) *Kartar Singh & Anor.* v. *R.* [1952] M.L.J. 85.

FEDERAL COURT.

Appellant in person.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Azmi C.J. (Malaya) (delivering oral judgment): The appellant was charged with causing mischief by intending to cause destruction by fire of house No. 24 Jalan Siew Nam, Johore Bahru, an offence punishable under section 436 of the Penal Code.

It is pertinent to note at this stage that one of the essential things the prosecution must prove to sustain a conviction against the appellant under this section, is that there was intention on the part of the appellant to cause the destruction of the house or that he knew it to be likely that he would thereby cause such destruction.

The facts for the prosecution may be summarised as follows. The appellant was employed as secretary to the Kwong Siew Wai Kuan Association and according to the treasurer and president of the association, the appellant had failed to give account of some money that he as

secretary had collected from the members of the association. He was asked to prepare the accounts of such money but he failed to do so up to the date of the outbreak of the fire. I think it is part of the prosecution case that the appellant intended to destroy all account books by burning them. The treasurer said that the appellant had not accounted for money he collected amounting to about $1,378, but in answer to cross-examination by the appellant the treasurer admitted that the accounts had not yet been audited.

According to two young persons, one a boy of 12 and another of 16 years, they saw something burning on the ground floor of the premises, and they also saw the appellant outside the door of that part of the floor used as the office of the association. The 12 year old boy Chan Soon Kong said that the appellant also helped to put out the fire and after some water had been poured on the burning part the boy noticed, to use his own words, "fire on the flowing water." Whereupon he said something to the effect that there must be petrol in the flowing water. When he made this remark, the appellant warned the witness not to mention petrol in case witness' uncle — apparently the caretaker — would get into trouble. The older boy corroborated this part of the story but according to him what the appellant said was this "Do not mention about petrol. Your uncle has a car. If you mention it your uncle would be salah."

There was evidence by the caretaker of the premises to the effect that when he saw the appellant some time later in the day at another place, the appellant was said to have remarked that the fire was caused in the first floor by a fault in the electric wiring. The electrical engineer said that in his opinion the fire could not have been caused by an electrical fault. The fire officer said that there was fire on the ground floor as well as on the first floor and in his opinion because of the good condition of the first floor the two fires originated separately. In other words, it was not a case of the fire starting on one floor and spreading to the other.

At the trial the appellant elected to say nothing. Nor did he call any other witness on his behalf.

It will be seen that it was the prosecution case that the appellant caused the fire on both floors and his intention was to destroy all papers and accounts of the association and his motive was to get rid of all evidence that might be used against him for failure to account for the money he was alleged to have collected from members of the association.

At the hearing of the appeal Mr. Ajaib Singh quite rightly said that the evidence against the appellant was only circumstantial evidence. It was therefore for the trial court to consider whether these bits of evidence are true and having regard to all of them whether they force him to come to one conclusion and one conclusion only that the appellant was guilty.

The learned judge himself after summarising the facts of the case said as follows:

> "In all the circumstances of this case the evidence in my judgment reasonably suggests that it was the accused who was responsible for the fire."

Though at a later stage the learned trial judge, after referring to the evidence of the boy about petrol, which evidence in his opinion, clearly showed the guilty conduct of the appellant said:

> "At the close of the prosecution case I was more than satisfied that a case had been made out against the accused which, if unrebutted, would warrant a conviction."

In our view, the learned judge had been unduly influenced by the appellant's alleged motive for destroying all papers connected with the accounts of the association and also on the evidence of the two young persons in reference to appellant's attempt to restrain the two lads from referring to the fact that there was petrol in the flowing water.

As Murray-Ainsley C.J. in *Kartar Singh & Anor.* v. *Rex* [1] says:

> "Where there is direct evidence, however, slight, the jury are entitled to accept it and the case should be left to them to decide. In the case of circumstantial evidence the position is different. Here the evidence must be such that, if it is believed, there is no reasonable alternative to the guilt of the accused. If it is anything less than this it is no case at all."

In our view, there was insufficient evidence upon which the learned judge could have come to the conclusion beyond reasonable doubt that it was the appellant who started the fire to destroy the building. We would therefore allow the appeal and set aside the conviction and sentence.

Appeal allowed.

MOHAMED ABDUL KADER v. PUBLIC PROSECUTOR

[A.C.J. (Ong Hock Sim J.) September 1, 1966]

[Penang — Criminal Appeal No. 7 of 1966]

Penal Code, ss. 349, 350 and 353 — Using criminal force to a public servant to prevent him from discharging his duty — Ingredients of.

The accused had been convicted of using criminal force to a public servant to prevent him from discharging his duty. The evidence was that the appellant who had a chopper in his hand had said "If you go in I will hammer you".

Held: as no force was in fact used the appellant could not be convicted of using criminal force and further as it was only an inference that the public servant would be prevented from entering the shop, there was no evidence that the appellant intended to prevent the